

(Caption of Case)

Lisa Lochbaum,
Complainant/Petitioner

v.

Utilities Services of South Carolina, Inc.,
Defendant/Respondent.

216761
BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2009 - 39 - W

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

Address: Post Office Box 8416

Telephone: 803-252-3300

Columbia, SC 29202

Fax: 771-2410

Other:

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☒ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☐ Telecommunications
☐ Transportation
☒ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input checked="" type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

May 15, 2009

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RECEIVED
MAY 15 PM 1:01
PUBLIC SERVICE
COMMISSION

RE: Lisa Lochbaum, Complainant/Petitioner v. Utilities Services of South Carolina,
Inc., Defendant/ Respondent.
Docket No.: 2009-39-W

Dear Mr. Terreni:

Enclosed for filing on behalf of Utilities Services of South Carolina, Inc. are the original and one (1) copy of the Motion to Dismiss and Alternative Motion to Strike in the above-referenced matter. By copy of this letter, I am serving a copy of these documents upon the parties of record and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning the same to me via our courier.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/cf

Enclosures

cc: Jeffrey M. Nelson, Esquire
Lisa Lochbaum

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-39-W

RECEIVED
PUBLIC SERVICE
COMMISSION
2/20/09 1:13 PM

IN RE:

Lisa Lochbaum,

Complainant/Petitioner

v.

Utilities Services of South Carolina, Inc.,

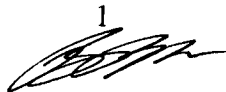
Defendant/Respondent.

**MOTION TO DISMISS AND
ALTERNATIVELY
MOTION TO STRIKE**

Pursuant to 26 S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Utilities Services of South Carolina, Inc. ("USSC" or the "Company") hereby moves the Public Service Commission of South Carolina ("Commission") to dismiss the above-captioned matter on the grounds that the complainant has failed to follow the Commission rules and regulations and failed to file prefiled testimony in accordance with the Commission's directions. Alternatively, USSC moves to strike certain statements attributed to non-parties. In support thereof, the Company would show as follows:

BACKGROUND

This matter arises from a complaint filed with the Commission on or about January 26, 2009, which was amended by the complainant on or about February 2, 2009. By letter dated April 28, 2009, Commission Staff established deadlines for the parties to this proceeding to file prefiled

1


testimony and served this document on all parties of record, including the complainant. Pursuant to the Commission's directions, the complainant's prefiled direct testimony was due on May 12, 2009. By letter dated May 12, 2009, the complainant informed the Commission and the parties of record to this proceeding that the complainant's "[w]itness testimony has been included in [the] original and revised complaint." The complainant further stated that "[b]ecause there is a requirement to submit testimony and exhibits of witnesses by May 12, 2009, [the complainant is] supplying this letter and a few emails from residents in Dutchman Shores Subdivision."

ARGUMENT

The complainant failed to file the required testimony in accordance with the rules and regulations of the Commission and the Commission's letter dated April 28, 2009.¹ See S.C. Code Ann. § 58-3-140 (Supp. 2008); 26 S.C. Code Ann. Regs. 103-845 (prefiled testimony requirement). Rather, the complainant proposes to submit the information contained within the complaint as prefiled testimony. To the contrary, the Commission has previously held that a complaint is not the equivalent of prefiled testimony and does not give the parties any reasonable expectation of what the complainant may testify to as to her own witness at the hearing. See Commission Order No. 2008-483, dated July 3, 2008, Docket No. 2007-205-E, p. 4 (holding a verified complaint does not constitute a complainant's prefiled testimony); cf Commission Order No. 2002-348, dated May 2, 2002, Docket No. 2002-57-EC (holding complainant's reference to materials on file with the Commission does not take the place of actual testimony and exhibits filed in compliance with a

¹ As the Commission is aware, USSC's prefiled testimony in this matter is due to be filed on May 26, 2009. Because complainant failed to comply with the Commission's rules and regulations and the prefiled testimony requirements and while this Motion to Dismiss is pending, USSC cannot file testimony in this docket.

scheduling order). The complainant has failed to file any document which identifies the issues or positions the complainant will raise or take at the hearing and the documents asserted to constitute testimony provide no basis for the preparation of USSC's responsive prefiled direct testimony. Further, the complainant has not requested a waiver of the Commission's regulation with respect to prefiled testimony. See 26 S.C. Code Ann. R. 103-803. Because the complainant failed to comply with the procedural requirements set forth by Commission Staff and Commission regulations, this matter should, therefore, be dismissed.

Additionally, the complainant submitted two documents purporting to be correspondence from customers of USSC, namely Ms. Rhonda Hite and Mr. Donnie Haltiwanger. USSC initially states that neither of the documents are sufficient to give any reasonable indication of testimony these witnesses might give with respect to the instant complaint and do not satisfy the Commission's regulations regarding prefiled testimony. However, if these documents do constitute prefiled testimony, which USSC disputes, the issues addressed by Ms. Hite and Mr. Haltiwanger are not related to the instant complaint; rather, these documents purport to pertain to matters unrelated to service rendered to the complainant, which is the subject of this docket. In fact, by way of a letter dated February 2, 2009, in which the complainant amended the original complaint filed in this matter, the complainant acknowledged and averred that she is "solely representing [her]self" in this matter. Ms. Hite and Mr. Haltiwanger each make assertions related to service they individually receive as customers and do not set forth statements of fact related to service rendered to the complainant, which is all that is presently at issue.² Therefore, should the Commission determine that

² The email from Mr. Haltiwanger dated May 11, 2009, was addressed to Ms. Leslie Hendrix. Ms. Hendrix has filed a separate complaint pending in Docket No. 2009-102-W which, for hearing



these documents constitute prefiled testimony for the purposes of R. 103-845, USSC alternatively moves to strike this testimony as being irrelevant to the instant proceeding inasmuch as it fails to support any assertion made in the complaint and is unrelated to service rendered by USSC to the complainant.

CONCLUSION

The complainant's reliance upon information submitted with her complaint does not constitute prefiled testimony in accordance with 26 S.C. Code Ann. R. 103-845 and prior holdings of the Commission. Further, the documents submitted with the complainant's letter dated May 12, 2009 do not constitute prefiled testimony, or, in the alternative, should be stricken as irrelevant to the current proceeding and unrelated to service rendered by USSC to the complainant. As such, the complainant has failed to comply with the Commission's rules and procedures, and, therefore, this case should be dismissed with prejudice. See Jackson v. S.C. Electric & Gas Co., Order Granting Motion to Dismiss, Order No. 2007-670, Docket No. 2007-262-EG (S.C. Pub. Serv. Comm'n Sept. 27, 2007) (dismissing case when complainant failed to prefile testimony).

Alternatively, should the Commission afford the complainant another opportunity to submit prefiled direct testimony which complies with the Commission's rules and regulations, USSC respectfully requests that the Commission establish new testimony deadlines for this matter and, if necessary, postpone the hearing currently scheduled for June 15, 2009 so as to provide the parties of record comparable time to prepare prefiled testimony as previously scheduled by the Commission.

[SIGNATURE PAGE FOLLOWS]

purposes, has been consolidated with complaints pending in Docket No. 2009-75-W, 2009-99-W and 2009-109-W. However, the instant complaint has not been consolidated with those matters.





John M.S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant/Respondent

Columbia, South Carolina
This 15th day of May, 2009

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-39-W

RECEIVED
2009 MAY 15 PM 1:01
PUBLIC SERVICE
COMMISSION

IN RE:)
)
Lisa Lochbaum,)
Complainant/Petitioner)
)
v.)
)
Utilities Services of South Carolina, Inc.,)
Defendant/Respondent)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of Defendant's **Motion to Dismiss and Alternatively to Strike** in the above-referenced action by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Lisa Lochbaum
221 Dutchman Shores Circle
Chapin, SC 29036

Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Clark Fancher
Clark Fancher

Columbia, South Carolina
This 15th day of May, 2009.